

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MICHAEL GRASSO,

Petitioner,

vs.

Case No. 21-0801F

ST. MARKS STONE CRAB FESTIVAL, INC.,

Respondent.

RECOMMENDED ORDER REGARDING AMOUNT OF COSTS OWED PETITIONER

Pursuant to notice, telephonic status conferences were conducted in this case on March 8 and 9, 2021, before Administrative Judge Garnett W. Chisenhall of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: Michael Grasso, pro se
2017 Gardenbrook Lane
Tallahassee, Florida 32301

For Respondent: Ronald A. Mowrey, Esquire
Mowrey Law Firm, P.A.
515 North Adams Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether Petitioner, Michael Grasso (“Mr. Grasso”), should recover any costs after successfully demonstrating that Respondent, St. Marks Stone Crab Festival (“the Festival”), violated the Florida Civil Rights Act by conditioning Mr. Grasso’s entry on the production of documentation substantiating that his dog was a “service animal.”

PRELIMINARY STATEMENT

On November 10, 2020, the undersigned issued a Recommended Order in DOAH Case No. 20-3036 (“the underlying case”) finding that the greater weight of the evidence demonstrated that the Festival violated section 413.08(2)(b), Florida Statutes (2019),¹ by conditioning Mr. Grasso’s entry on the production of documentation substantiating that his dog Zuco is a “service animal” within the meaning of section 413.08(1)(d).

On February 25, 2021, the Florida Commission on Human Relations (“the Commission”) issued an “Interlocutory Order Awarding Affirmative Relief from an Unlawful Public Accommodation Practice and Remanding Case to Administrative Law Judge for Issuance of Recommended Order Regarding Amounts of Costs Owed Petitioner” (“the Interlocutory Order”). Via the Interlocutory Order, the Commission: (a) adopted the findings of fact and conclusions of law set forth in the undersigned’s Recommended Order; (b) rejected exceptions filed by Mr. Grasso and the Festival; (c) ordered the Festival to cease and desist from discriminating further in the manner it had been found to have unlawfully discriminated against Mr. Grasso; and (d) required the Festival to pay Mr. Grasso the costs that he had reasonably incurred in this matter. Accordingly, the Commission remanded this matter to DOAH for “further proceedings to determine the amount of costs owed to [Mr. Grasso] and the issuance of a Recommended Order as to those amounts.”

The undersigned convened telephonic status conferences to ascertain what costs, if any, Mr. Grasso was seeking to recover.

¹ Unless stated otherwise, all statutory references shall be to the 2019 version of the Florida Statutes.

FINDINGS OF FACT

1. Mr. Grasso represented himself during the underlying proceeding and did not incur any attorney's fees.²

2. Mr. Grasso asserted during the March 8, 2021, telephonic status conference that he was seeking to recover no costs other than the cost of traveling to and from Tallahassee for the final hearing on August 27 and September 17, 2020, in the underlying case.

3. During the March 9, 2021, status conference, the undersigned inquired about any costs Mr. Grasso incurred in copying documents filed with DOAH. Mr. Grasso responded that he was not seeking to recover the costs associated with making copies of the exhibits he moved into evidence during the underlying proceeding.

4. The undersigned also inquired during the March 9, 2021, status conference about any costs Mr. Grasso incurred with regard to presenting the testimony of Deputy Robert Standeford and Sergeant Jeffrey Yarbrough. Mr. Grasso responded that he incurred no appearance fees and no costs for serving subpoenas.

5. After consulting Appendix II to the Florida Rules of Civil Procedure containing the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions ("the Guidelines"), the undersigned finds that Mr. Grasso should not be awarded any costs related to the underlying proceeding.

CONCLUSIONS OF LAW

6. DOAH has jurisdiction over this matter pursuant to the Interlocutory Order.

² As a pro se party, Mr. Grasso is not entitled to attorney's fees in this matter. *See generally Adelman v. Acme Mkts. Corp.*, 1996 WL 156412, N 5 (E.D. Pa. Apr. 3, 1986)(noting that "[a] pro se party, even one who is a lawyer, may not recover attorney fees.").

7. Section 760.11(6), Florida Statutes, provides that “[i]n any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney’s fee as part of the costs.”

8. The Guidelines state that they are “advisory only” and that “[t]he taxation of costs in any particular proceeding is within the broad discretion of the trial court.”

9. As for the burden of proof, the Guidelines provide that “it is the burden of the moving party to show that all requested costs were reasonably necessary either to defend or prosecute the case at the time the action precipitating the cost was taken.”

10. The Guidelines specify that certain litigation costs should be taxed. For example, the Guidelines specify the following costs pertaining to “Documents and Exhibits” as litigation costs that should be taxed: (a) “[t]he costs of copies of documents filed (in lieu of ‘actually cited’) with the court, which are reasonably necessary to assist the court in reaching a conclusion”; and (b) “[t]he costs of copies obtained in discovery, even if the copies were not used at trial.” As noted above, Mr. Grasso is not seeking to recover the costs associated with making copies of the exhibits he moved into evidence during the underlying proceeding.

11. The Guidelines also specify that the following costs associated with “Witnesses” should be taxed: “[c]osts of subpoena, witness fee, and service of witnesses for deposition and/or trial.” Mr. Grasso did not incur any recoverable costs in having Deputy Standeford and Sergeant Yarbrough testify during the final hearing for the underlying proceeding.

12. The Guidelines identify the following as “Reasonable Travel Expenses” that “may be taxed” as costs: (a) “[r]easonable travel expenses of expert when traveling in excess of 100 miles from the expert’s principal place of business (not to include the expert’s time)”; and (b) “[r]easonable travel expenses of witnesses.”

13. Because the Guidelines do not identify a party's travel expenses as recoverable costs, Mr. Grasso cannot recover the costs he incurred in traveling to and from Tallahassee for the final hearing on August 27 and September 17, 2020, in the underlying case.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a final order declining to award Michael Grasso any costs in this matter.

DONE AND ENTERED this 16th day of March, 2021, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
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Tallahassee, Florida 32399-3060
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of March, 2021.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.